



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9883]

RIN 1545-BM90

Ownership Attribution for Purposes of Determining Whether a Person Is Related to a Controlled Foreign Corporation; Rents Derived in the Active Conduct of a Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the attribution of ownership of stock or other interests for purposes of determining whether a person is a related person with respect to a controlled foreign corporation (“CFC”) under section 954(d)(3). In addition, the final regulations provide rules for determining whether a CFC is considered to derive rents in the active conduct of a trade or business for purposes of computing foreign personal holding company income. This document finalizes the proposed regulations published on May 20, 2019. The regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For the dates of applicability, see §§1.954-1(f)(3), 1.954-2(i)(2), and 1.958-2(h).

FOR FURTHER INFORMATION CONTACT: Kristine A. Crabtree at (202) 317-6934.

## SUPPLEMENTARY INFORMATION:

### **Background**

On May 20, 2019, the Department of the Treasury (“Treasury Department”) and the IRS published proposed regulations (REG-125135-15) under sections 954 and 958 in the **Federal Register** (84 FR 22751) (the “proposed regulations”). No public hearing was requested or held. All written comments received in response to the proposed regulations are available at [www.regulations.gov](http://www.regulations.gov) or upon request. Because no comments suggested revisions to the proposed regulations, this Treasury decision adopts the proposed regulations as final regulations without change.

### **Summary of Comments**

The proposed regulations and the final regulations limit the application of the section 318(a)(3) constructive ownership rules for purposes of the definition of related person in section 954(d)(3) to avoid inappropriately treating entities, including CFCs, that do not have a significant relationship to each other as related persons. Comments agreed with the Treasury Department and the IRS that limiting the application of the downward attribution rules of section 318(a)(3)(A) incorporated by section 958(b) for purposes of section 954(d)(3) avoids inappropriate results, and one comment urged the Treasury Department and the IRS to provide a similar limitation on the application of those rules for purposes of determining whether a foreign corporation is a CFC. The Treasury Department and the IRS are separately studying the application of section 958(b) following the repeal of section 958(b)(4) by the Tax Cuts and Jobs Act, Public Law 115-97 (2017), and the final regulations do not address the application of the

constructive ownership rules of section 958(b) for purposes other than section 954(d)(3).

### **Effect on Other Documents**

Section 7(d) of Notice 2007-9, 2007-1 C.B. 401, is obsoleted.

### **Special Analyses**

OIRA has waived review of this final rule in accordance with section 6(a)(3)(A) of E.O. 12866.

Because this rulemaking is an interpretive rule and does not impose a collection of information on small entities, under 5 U.S.C. 603(a) the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received.

### **Drafting Information**

The principal author of the final regulations is James Beatty of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of these proposed regulations.

### **Statement of Availability of IRS Documents**

Notice 2007-9 is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government

Publishing Office, Washington, DC 20402, or by visiting the IRS website at  
<http://www.irs.gov>.

## **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.954-1 also issued under 26 U.S.C. 954(b) and (c).

Section 1.954-2 also issued under 26 U.S.C. 954(b) and (c).

\* \* \* \* \*

Par. 2. Section 1.954-0 is amended in paragraph (b) by adding entries for §§1.954-1(f)(3), (f)(3)(i) through (iii), (g), and (g)(1) through (4) and 1.954-2(c)(2)(v) through (viii), (d)(2)(v), (i), and (i)(1) through (3) to read as follows:

### **§1.954-0 Introduction.**

\* \* \* \* \*

(b) \* \* \*

### **§1.954-1 Foreign base company income.**

\* \* \* \* \*

(f) \* \* \*

(3) Applicability dates.

(i) General rule.

(ii) Option rule in paragraph (f)(2)(iv)(B)(2) of this section.

(iii) Anti-abuse rule.

(g) Distributive share of partnership income.

(1) Application of related person and country of organization tests.

(2) Application of related person test for sales and purchase transactions between a partnership and its controlled foreign corporation partner.

(3) Examples.

(4) Effective date.

§1.954-2 Foreign personal holding company income.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Leased in foreign commerce.

(vi) Leases acquired by the CFC lessor.

(vii) Marketing of leases.

(viii) Cost sharing arrangements (CSAs).

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(v) Cost sharing arrangements (CSAs).

\* \* \* \* \*

(i) Applicability dates.

(1) Paragraphs (c)(2)(v) through (vii).

(2) Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section.

(3) Other paragraphs.

Par. 3. Section 1.954-1 is amended by revising paragraph (f)(2)(iv) and adding paragraph (f)(3) to read as follows:

§1.954-1 Foreign base company income.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(iv) Direct or indirect ownership. For purposes of section 954(d)(3) and this paragraph (f), to determine direct or indirect ownership--

(A) The principles of §1.958-1 and section 958(a) apply without regard to whether a corporation, partnership, trust, or estate is foreign or domestic or whether an individual is a citizen or resident of the United States; and

(B) The principles of §1.958-2 and section 958(b) apply, except that--

(1) Neither section 318(a)(3), nor §1.958-2(d) or the principles thereof, applies to attribute stock or other interests to a corporation, partnership, estate, or trust; and

(2) Neither section 318(a)(4), nor §1.958-2(e) or the principles thereof, applies to treat dividends, interest, rents, or royalties received or accrued from a foreign corporation as received or accrued from a controlled foreign corporation payor if a principal purpose of the use of an option to acquire stock or an equity interest, or an interest similar to such an option, that causes the foreign corporation to be a controlled foreign corporation payor is to qualify dividends, interest, rents, or royalties paid by the foreign corporation for the section 954(c)(6) exception. For purposes of this paragraph (f)(2)(iv)(B)(2), an interest that is similar to an option to acquire stock or an equity interest includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock or an equity interest, a put, a stock or equity interest subject to risk of forfeiture, and a contract to acquire or sell stock or an equity interest.

(3) Neither section 318(a)(4), nor §1.958-2(e) or the principles thereof, applies to treat a person that has an option to acquire stock or an equity interest, or an interest similar to such an option, as owning the stock or equity interest if a principal purpose for the use of the option or similar interest is to treat a person as a related person with respect to a controlled foreign corporation under this paragraph (f). For purposes of this paragraph (f)(2)(iv)(B)(3), an interest that is similar to an option to acquire stock or an equity interest includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock or an equity interest, a put, a

stock or equity interest subject to risk of forfeiture, and a contract to acquire or sell stock or an equity interest.

(3) Applicability dates--(i) General rule. Except as otherwise provided in this paragraph (f)(3), paragraph (f)(2)(iv) of this section applies to taxable years of controlled foreign corporations ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and taxable years of United States shareholders in which or with which such taxable years end.

(ii) Option rule in paragraph (f)(2)(iv)(B)(2) of this section. Paragraph (f)(2)(iv)(B)(2) of this section applies to taxable years of controlled foreign corporations beginning after December 31, 2006, and ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and taxable years of United States shareholders in which or with which such taxable years end.

(iii) Anti-abuse rule. Paragraphs (f)(2)(iv)(B)(1) and (3) of this section apply to taxable years of controlled foreign corporations ending on or after May 17, 2019, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to amounts that are received or accrued by a controlled foreign corporation on or after May 17, 2019 to the extent the amounts are received or accrued in advance of the period to which such amounts are attributable with a principal purpose of avoiding the application of paragraph (f)(2)(iv)(B)(1) or (3) of this section with respect to such amounts.

\* \* \* \* \*

Par. 4. Section 1.954-2 is amended by:

1. Revising paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A).

2. Revising the heading of paragraph (i).
3. Redesignating paragraph (i)(2) as paragraph (i)(3).
2. Adding new paragraph (i)(2).

The revisions and addition read as follows:

§1.954-2 Foreign personal holding company income.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(B) Deductions for amounts (including rents and royalties) paid or incurred by the lessor for the right to use the property (or a component thereof) that generated the rental income;

\* \* \* \* \*

(iv) \* \* \*

(A) Amounts (including rents and royalties) paid or incurred by the lessor for the right to use the property (or a component thereof) that generated the rental income;

\* \* \* \* \*

(i) Applicability dates. \* \* \*

(2) Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section. Paragraphs (c)(2)(iii)(B) and (c)(2)(iv)(A) of this section apply for taxable years of controlled foreign corporations ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and for the taxable years of United States shareholders in which or with which such taxable years end.



\* \* \* \* \*

Par. 5. Section 1.958-2 is amended by revising paragraph (d)(1) introductory text and the first sentence of paragraph (e) and adding paragraph (h) to read as follows:

§1.958-2 Constructive ownership of stock.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* Except as otherwise provided in paragraph (d)(2) of this section and §1.954-1(f)--

\* \* \* \* \*

(e) \* \* \* Except as otherwise provided in §1.954-1(f), if any person has an option to acquire stock, such stock shall be considered as owned by such person. \* \* \*

\* \* \* \* \*

(h) Applicability date. Paragraphs (d)(1) and (e) of this section apply for taxable years of controlled foreign corporations ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and for the taxable years of United States shareholders in which or with which such taxable years end.

\* \* \* \* \*

Sunita Lough

Deputy Commissioner for Services and Enforcement.

Approved: October 28, 2019

David J. Kautter

Assistant Secretary of the Treasury (Tax Policy).